HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.20870 of 1999

Date:06th July,2006

Between:
S.E.R.M.Junior College, Gudlavalleru, Krishna District,
rep. by its Correspondent.

..... PETITIONER

AND

1. State of Andhra Pradesh rep. by its Secretary to Government, Education Department, Secretariat, Saifabad, Hyderabad and others.

.....RESPONDENTS

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HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.20870 of 1999

ORDER:

This writ petition has been filed by S.E.R.M. Junior College, Gudlavalleru, Krishna District represented by its Correspondent questioning the direction of the respondents to follow sub-rule (6) of Rule 12 of G.O.Ms.No.1 Education (PS.2) Department, dated 01.01.1994.

2. Learned counsel appearing for the petitioner submits that sub-rule (6) of Rule 12 of G.O.Ms.No.1 Education (PS-2) Department, dated 01.01.1994 fell for consideration in ***P.Thirumala Devi v. Government of A.P., Education Department, Hyderabad and others*** (W.P.No.9976 of 1996)[1] and the same has been declared as void. He would further submit that the government deleted the said sub-rule by issuing G.O.Ms.No.75 Education dated 23.09.2002.

3. This Court in the above cited decision has held that sub-rule (6) of Rule 12 of G.O.Ms.No.1 Education (PS-2) Department, dated 01.01.1994, is *ultra vires* the provisions of the Andhra Pradesh Education Act, 1982. For better appreciation I may refer para.6 of the judgment cited and it is thus:

> ` "6. It is pointed that under Article 309 of the Constitution of India the appropriate Legislature is empowered to legislating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. Under the proviso to the said Article till such legislation is made, the President or the Governor as the case may be, are empowered to frame rules, regulation, regulating the recruitment and condition of service of persons appointed to services and posts in connection with the affairs of the Union or State. In exercise of the said power the Central Government as well as State Governments framed rules, regulation regulating the recruitment and service condition of persons appointed to the post, in connection with the affairs of the Centre or State. As far as the State is concerned it has framed State and Sub-ordinate Service Rules incorporating the mandate incorporated under Article 15(4) of the communal rotation roaster. The State and Subordinate Service Rules, which are framed under Article 309 of the Constitution are not applicable to the private aided educational institutions. Therefore, there is no provision in the Act, 1982 enabling the State Law to frame rules providing for appointment on communal rotation roaster. In the absence of the provisions enabling the Government to frame rules for making appointments on the basis of communal rotation roaster, sub-rule 6 of Rule 12 is *ultra vires* the provisions of the Act. As pointed out in the earlier paragraph, Article 15(4) is only an enabling provision and it confers a power on the State to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Schedule Tribes. In this context a reference to the Judgment of the Supreme Court in *V.Sudheer etc. v. Bar Council of India and another*, (supra), is relevant:
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> > "A mere look at the aforesaid provision makes it clear that the rule making power entrusted to the Bar Council of India by the Legislature is an ancilliary power for fructifying and effectively discharging its statutory functions laid down by the Act. Consequently, Rules to be framed under Section 49(1) must have a statutory peg on which bang. If there is no such statutory peg the rule which is sought to be enacted *de hors* such a peg will have no foothold and will become still born."

> "Any rule framed by rule making authority going beyond its statutory functions must necessarily be held to be *ultra vires* and inoperative at law. Consequently, the valiant attempt made by Shri Rao for sustaining the Rules under Section 49(1)(af), (ag) and (ah) would remain abortive only on this short ground."
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> Therefore any rule framed without a statutory power is *ultra vires* the provisions of the Act and it is to be declared as such. I am therefore of the view that sub-rule (6) of Rule 12 of G.O.Ms.No.1, dated 01.01.1994 is *ultra vires* of the provisions of the Act."

4. In view of the proposition of law laid down in the cited decision, this writ petition is disposed of directing the respondents to consider the representation of the petitioner for filling-up the aided post and pass appropriate orders thereon within two months from the date of receipt of a copy of this Order. No costs.

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B.SESHASAYANA REDDY, J.

Date:06th July, 2006.

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[1] 1999 (3) ALD 313